UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

CALIFORNIA BIO-PRODUCTEX, INC./
CROWN NATURAL FOODS

and

Case 32-CA-24486

CREAMERY EMPLOYEES AND DRIVERS, PUBLIC, PROFESSIONAL AND MEDICAL EMPLOYEES, LOCAL NO. 517, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

ORDER¹

The Petitions to Revoke Subpoenas Ad Testificandum A-814017, A-814018, and A-814075 and Subpoena Duces Tecum B-630404 are denied. The subpoenas seek information relevant to the matter under investigation and describe with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Petitioner has failed to establish any other legal basis for revoking the subpoenas. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a threemember group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Teamsters , 2009 WL 4912300 (10th Cir. Dec. 22, 2009); Narricot Local 523 v. NLRB, F.3d Industries, L.P. v. NLRB, 587 F.3d 654 (4th Cir. 2009); Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

The General Counsel is required to identify with some degree of particularity the relevant documents sought. Subpoenas Duces Tecum B-630363 and B-630364 fail to do so. Consequently, the Petition to Revoke those subpoenas is granted to the extent that the General Counsel seeks the production of all documents responsive to each of the numbered paragraphs, provided that the Petitioner must produce such documents as are sufficient to determine the requested information.² In all other respects, the Petitions to Revoke are denied.³

However, we condition our denial of the petitions with respect to subpoenas ad testificandum A-814017, A-814018, and A-814075 upon the Region supplying the subpoenaed witness with a copy of the unfair labor practice charge under investigation.

Section 102.31(b) of the Board's Rules and Regulations states, in pertinent part, that the Board shall revoke a subpoena if in its opinion the subpoena "does not describe with sufficient particularity the evidence whose production is required." The testimonial subpoenas in this case identify, by name and number, the unfair labor practice case

encompassed by this subpoena, it is not required to again provide them.

For example, par. 7 requires production of "All documents setting forth the names of all corporate officers and directors" of the Charged Parties. Such a request could conceivably require the production of an enormous array of documents. Since it appears that the General Counsel seeks only the names of all corporate officers and directors—the kind of information that would be found, for example, in a company's bylaws—we require production only of such documents as are sufficient to determine the specific information requested. A similar analysis could be performed on each of the other requests. Consequently, we recommend that the General Counsel and the Charged Parties promptly confer to avoid any confusion over the production and to assure compliance by the Charged Parties with the subpoenas.

We have construed the Petitions to Revoke liberally in light of the movant's prose status, and conclude in the particular circumstances of this case that this issue is properly before us. This limitation on Subpoenas Duces Tecum B-630363 and B-630364 is without prejudice to the General Counsel's right to issue subsequent subpoenas if the production made does not sufficiently provide the information sought.

To the extent that the Employer has already provided the Region with documents

about which testimony is sought. Accordingly, under current Board law, they are sufficiently particularized. See *Offshore Mariners United*, 338 NLRB 745 (2002) (subpoena ad testificandum was not overly broad or vague where it identified unfair labor practice cases by name and number); *Postal Workers Local 64 (USPS)*, 340 NLRB 912 (2003).

However, a difference of opinion has arisen concerning whether *Offshore*Mariners and Postal Workers Local 64 (USPS) were correctly decided. Specifically, there is disagreement concerning (1) whether the particularity requirement of Section 102.31(b) of the Board's Rules and Regulations applies to a subpoena ad testificandum, and (2) if the particularity requirement does apply, whether a subpoena ad testificandum must describe the testimony sought, as well as identify the relevant unfair labor practice case by name and number. Without deciding these issues, we shall require the Region to provide the subpoenaed witness with a copy of the underlying unfair labor practice charge.⁴ This Order shall be nonprecedential.

Dated, Washington D.C., January 29, 2010

WILMA B. LIEBMAN,

CHAIRMAN

PETER C. SCHAUMBER,

MEMBER

⁴ Chairman Liebman would adhere to existing precedent on this issue. For institutional reasons, however, she joins her colleague in requiring the Region to provide the subpoenaed witness with a copy of the unfair labor practice charge under investigation. In addition, because the subpoenas contain general descriptions of the matters concerning which the witness will be expected to testify, we shall not require that this information be provided a second time.